

# *COMMONWEALTH of VIRGINIA*

DEPARTMENT OF ENVIRONMENTAL QUALITY  
PIEDMONT REGIONAL OFFICE

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## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO INGENCO Wholesale Power, LLC. Registration No. 51201 (Rockville)**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and INGENCO Wholesale Power, LLC (INGENCO) for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations at INGENCO's Rockville facility.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2020 Consent Order" means the March 16, 2020, Consent Order, between the Department and INGENCO, resolving the NOV issued to INGENCO on August 23, 2018.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Dinwiddie" means INGENCO's Dinwiddie facility, an electricity and heat production plant located at 25505 Weakley Rd, Petersburg, Virginia, with Registration No. 51083.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "FCE" means an on-site Full Compliance Evaluation performed by DEQ staff.
8. "INGENCO" means INGENCO Wholesale Power, LLC., a limited liability corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. INGENCO is a "person" within the meaning of Va. Code § 10.1-1300.
9. "MACT" means the National Emission Standards for Hazardous Air Pollutants, a portion of the Federal regulations located at 40 CFR 63, governing the emission and control of hazardous air pollutants.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
12. "PCE" means a partial compliance evaluation by DEQ staff.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Permit 1" means the Title V permit to operate an electrical power generation plant at INGENCO's Rockville Facility, which was last amended under the Virginia Air Pollution Control Law and Regulations, and issued to INGENCO on December 14, 2017 and last updated on April 28, 2020. (No. 51201).
15. "Permit 2" means the Title V permit to operate an electrical power generation plant at INGENCO's Dinwiddie Facility, which was last amended under the Virginia Air Pollution Control Law and Regulations, and issued to INGENCO on December 14, 2017. (No. 51083).
16. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
17. "Rockville" means INGENCO's Rockville facility, an electricity and heat production plant located at 2369 Lanier Rd, Rockville, Virginia, with Registration No. 51201.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Rockville is the subject of Permit 1 and Dinwiddie is the subject of Permit 2. Both permits allow the operation of the electrical power generation facilities, respectively.
2. On February 12, 2020, DEQ staff performed an on-site FCE at Rockville. Staff also performed reviews of compliance documentation submitted by INGENCO before and after the FCE date. The following paragraphs include Staff observations of the violations noted and the correlating legal requirements.
3. October 2, 2019, charge air temperature hourly averages were above 150 degrees Fahrenheit on engine numbers E2 through E14 and E16 at Rockville 1 for one hour. This is confirmed by both the temperature and daily plant log. Based on the October 27, 2020 staff review of the compliance records for the first half of 2020, June 16, 2020<sup>1</sup>, charge air temperatures were only recorded at 7:40 and the Rockville 1 engines operated for one hour from 6:30 until 7:30. Records were insufficient to determine compliance with this hour.
4. Condition 5 of Permit 1 states, "Fuel Burning Equipment Requirements – Limitations - The charge air temperature measured at the inlet to the forty Detroit Diesel Model 6063-GK 60 internal combustion engines (E1-40) shall not exceed an hourly average of 150 degrees F. An hourly average shall include all readings recorded within a clock hour. For time periods in which calculating a full clock hour is not possible (typically due to unit startup or shutdown), the permittee shall calculate the hourly average using the most recent 60 minutes of operational data. No calculation is necessary if 60 minutes of data is not available (the unit started and stopped within 60 minutes (9 VAC 5-80-110 and Condition No. 5 of the minor NSR permit dated 12/4/2013))"
5. Condition 12 of Permit 1 states, "12. Fuel Burning Equipment Requirements – Limitations - Emissions from the operation of any of the 40 diesel engines (E1-E40) when the facility is operated shall not exceed the limits specified below:  
...  
All other emission limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 1 through 5, 7, 9 and 10.  
(9 VAC 5-80-110 and Condition No. 17 of the minor NSR permit dated 12/4/2013)"
6. Condition 24.c. and d. of Permit 1 states, "24. Fuel Burning Equipment Requirements – Recordkeeping - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Piedmont Region. These records shall include, but are not limited to:  
...
  - c. Hourly records of engine inlet charge-air temperature readings to verify compliance with Condition 5.
  - d. All one hour periods of operation during which the charge-air temperature as described in Condition 5 exceeds the average charge-air temperature limit of 150 degrees F, calculated each month;

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<sup>1</sup> This date was erroneously referred to as June 13, 2020 in other supporting documents.

...  
(9 VAC 5-80-110 and Condition No. 20 of the minor NSR permit dated 12/4/2013)”

7. Condition 33 of Permit 1 states, “33. Facility Wide Conditions – Limitations - Total emissions from the facility shall not exceed the limits specified below, calculated monthly as the sum of each consecutive 12 month period:

...  
All other emissions limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 1 through 5, 7, 9 and 10. (9 VAC 5-80-110 and Condition No. 18 of the minor NSR permit dated 12/4/2013).

8. Condition 45 of Permit 1 states, “45. General Conditions - Recordkeeping and Reporting - Records of all monitoring data and support information shall be retained for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. (9 VAC 5-80-110 F)”
9. DEQ staff reviewed daily logs of visible emissions from January 2019 through February 2020. On January 31, 2019 an opacity of 15% was observed for Rockville 1. On October 2, 2019 an opacity of 35% was observed for Rockville 2. A notification was submitted to DEQ for the October 2 deviation on October 23, 2019.
10. Condition 13 of Permit 1 states, “13. Fuel Burning Equipment Requirements – Limitations - Visible emissions from the forty Detroit Diesel Model 6063-GK 60 internal combustion engines (E1-40) stacks shall not exceed 10.0% opacity as determined by EPA Method 9 (reference 40 CFR Part 60, Appendix A). This condition applies at all times except during startup, shutdown, and malfunction.
11. Condition 23 of Permit 1 states, “23. Fuel Burning Equipment Requirements – Monitoring - Once per month, the facility shall conduct an observation of the presence of visible emissions from the operating 40 internal combustion engines. If visible emissions are observed, the facility shall take timely corrective action such that the units resume operation with no visible emissions, or perform a visible emissions evaluation (VEE) in accordance with 40 CFR 60, Appendix A, Method 9 to assure visible emissions from any of the 40 internal combustion engines does not exceed 10% opacity whenever the engines are operated in a single fuel mode, except during one six-minute period in any one hour in which visible emissions shall not exceed 20% opacity and visible emissions from the 40 dual-fuel diesel engines stacks (S1-S8) shall not exceed 20% opacity whenever the engines are operated in a dual fuel mode except during one six-minute period in any one hour in which visible emissions shall not exceed 30.0% opacity. The VEE shall be conducted for a minimum of six minutes. If any of the observation exceeds 10% opacity, the VEE shall be conducted for sixty minutes. If compliance is not demonstrated by the VEE, timely corrective action shall be taken such that the operating engines resumes operation that is in compliance with the opacity limit. The facility shall maintain an observation log to demonstrate compliance. The log shall include the date and time of the observation, single or dual fuel operations, whether or not there were visible emissions, any VEE recordings and necessary corrective actions. Upon request by the DEQ, the facility shall conduct additional visible emission evaluations from the 40 internal

combustion engines to demonstrate compliance with the visible emission limits contained in this permit. The details of the tests shall be arranged with the Director, Piedmont Region. (9 VAC 5-80-110)”

12. DEQ staff reviewed records of monthly visible emissions evaluations from November 2018 through February 2020. Visible emission readings were taken at least monthly, however, on the following dates opacity was observed over the permitted limit and a 60 minute Method 9 was not performed afterward nor appropriate corrective action taken:  
Rockville 1: January 31, 2019  
Rockville 2: October 2, 2019
13. Condition 23 language is included in paragraph C.11.
14. The differential pressure gauge for the oxidation catalyst associated with engine bank F was reading beyond its mechanical limitations and was non-operational. Also, fluid was leaking from the gauge. Based on the October 27, 2020 staff review of the compliance records for the first half of 2020, the following days did not include readings for the differential pressure gauge:  
Rockville 1: February 4, 2020  
Rockville 2: March 31, 2020
15. Condition 17 (2017) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The oxidation catalyst shall be equipped with devices to continuously measure the differential pressure drop across each oxidation catalyst. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer’s written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the control devices are operating. (9 VAC 5-80-110).”
16. Condition 18 (2020) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The oxidation catalyst shall be equipped with devices to continuously measure the differential pressure drop across each oxidation catalyst. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer’s written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the control devices are operating. The permittee shall establish a normal operating range for the differential pressure drop across each oxidation catalyst, based on the manufacturer’s recommendations or developed from observations recorded from the monitoring devices during normal operation. The permittee shall maintain written documentation of this range. (9 VAC 5-80-110).”
17. During the on-site inspection, the exhaust temperature reading on engine number D1 (G13) was - 1437 °F, which is beyond its physical limitations. DEQ staff reviewed Daily records from November 2018 through February 2020 and records of the exhaust temperatures from June 2018 through February 2020. The oxidation catalyst readings for Rockville 2 were missing or erroneous (i.e. inconsistent dates, mismatched operating dates) for the following dates: January 14, February 10 and 12, 2020. Based on the October 27, 2020 staff review of the compliance records for the first half of 2020,
  1. Rockville 1, Unit 11 recorded a temperature of 2,501 °F from February 4 through March 31, 2020.
  2. Rockville 1, Unit 14 recorded a temperature 2,501 °F on February 4, 2020

3. Rockville 2, multiple engines recorded temperatures ranging from -94,642 °F to 94,013 °F throughout the first half of 2020.

18. Condition 18 (2017) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The oxidation catalyst shall be equipped with devices to continuously measure and record the inlet temperature to the catalyst bed at a minimum frequency of once every fifteen minutes during the operation of each engine group. As approved by the Director, Piedmont Regional Office, compliance with this requirement may be achieved by continuously measuring and recording the engine exhaust temperature at the minimum frequency described above and, as confirmation, measuring and recording the inlet temperature to the catalyst bed once per shift. The information shall be correlated to run date, engine load/kilowatt output, and engine operating hours. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the oxidation catalysts are operating. (9 VAC 5-80-110)”
19. Condition 19 (2020) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The oxidation catalyst shall be equipped with devices to continuously measure and record the inlet temperature to the catalyst bed at a minimum frequency of once every fifteen minutes during the operation of each engine group. As approved by the Piedmont Regional Office, compliance with this requirement may be achieved by continuously measuring and recording the engine exhaust temperature at the minimum frequency described above and, as confirmation, measuring and recording the inlet temperature to the catalyst bed once per shift. The information shall be correlated to run date, engine load/kilowatt output, and engine operating hours. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the oxidation catalysts are operating. The permittee shall establish a normal operating range for the engine exhaust temperature, based on the manufacturer's recommendations or developed from observations recorded from the monitoring devices during normal operation. The permittee shall maintain written documentation of this range. (9VAC5-80-110)
20. Condition 24.g. of Permit 1 states, “24. Fuel Burning Equipment Requirements – Recordkeeping - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Piedmont Region. These records shall include, but are not limited to:
- ...
- g. Operation and control device monitoring records for each engine group equipped with an oxidation catalyst (Ref. Nos. E1-E40). This includes records of the catalyst bed temperatures.
- ...
- (9 VAC 5-80-110 and Condition No. 20 of the minor NSR permit dated 12/4/2013)”
21. Condition 44 of Permit 1 states, “44. General Conditions - Recordkeeping and Reporting - All records of monitoring information maintained to demonstrate compliance with the terms and conditions of this permit shall contain, where applicable, the following:
- a. The date, place as defined in the permit, and time of sampling or measurements;

- b. The date(s) analyses were performed;
- c. The company or entity that performed the analyses;
- d. The analytical techniques or methods used;
- e. The results of such analyses; and
- f. The operating conditions existing at the time of sampling or measurement. (9 VAC 5-80-110 F)”

22. Condition 45 of Permit 1 as cited in Paragraph C.8.

23. DEQ staff reviewed spreadsheets containing the daily records for oil consumption from November 2018 through June 2020. The following dates in the spreadsheets contained data that was completed incorrectly or not completed at all:

Rockville 1: January 31, 2019

Rockville 2: June 2 and October 17, 2019; January 15, February 10 and 12, and June 16, 2020

24. Condition 20 (2017) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring – The monitoring devices used to measure distillate oil, biodiesel and Number 4 fuel oil consumption shall be observed by the permittee after each period of continuous operation when using any form of liquid fuel and then again once the engines have ceased operation. The permittee shall keep a daily log of the observations from each of the monitoring devices, to include each set of readings that define each period of operations. (9 VAC 5-80-110 and Condition No. 11 of the minor NSR permit dated 12/4/2013)”

25. Condition 21 (2020) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring – The monitoring devices used to measure distillate oil, biodiesel and Number 4 fuel oil consumption shall be observed by the permittee after each period of continuous operation when using any form of liquid fuel and then again once the engines have ceased operation. The permittee shall keep a daily log of the observations from each of the monitoring devices, to include each set of readings that define each period of operations. (9 VAC 5-80-110 and Condition No. 11 of the minor NSR permit dated 12/4/2013)”

26. Condition 44 of Permit 1 as cited in paragraph C.21.

27. Condition 45 of Permit 1 as cited in paragraph C.8.

28. DEQ staff reviewed spreadsheets containing the daily records for the catalyst differential pressure observations from November 2018 through June 2020. The following catalyst differential pressure observations were missing or erroneous (i.e. inconsistent dates, mismatched operating dates):

Rockville 1: November 12, 2019 and February 4, 2020

Rockville 2: November 12, 2019 and February 10 and 12, 2020.

29. Condition 21 (2017) of Permit 1 states, “21. Fuel Burning Equipment Requirements – Monitoring – The monitoring devices used to measure the catalysts shall be observed by the permittee with a frequency of not less than once per shift. The permittee shall keep a log of the observations including the time the observation was recorded, or continuously record measurements from each of the control monitoring devices. (9 VAC 5-80-110)”

30. Condition 22 (2020) of Permit 1 states, “22. Fuel Burning Equipment Requirements – Monitoring – The monitoring devices used to measure the catalysts as required by conditions 18

and 19, shall be observed by the permittee with a frequency of not less than once per shift. In the event that the monitoring devices are operating outside of the normal operating range, the permittee shall take necessary corrective actions such that the DOC resumes proper operation. The permittee shall keep a log of the observations including the time the observation was recorded, or continuously record measurements from each of the control monitoring devices, whether or not the monitoring devices were operating with the normal operating range and any necessary corrective actions [were] taken. (9 VAC 5-80-110)”

31. Condition 24 f. and g. of Permit 1 states, “24. Fuel Burning Equipment Requirements – Recordkeeping - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Piedmont Region. These records shall include, but are not limited to:

...

f. Log of observations or records of measurements from the pressure drop monitoring device on each catalysts.

g. Operation and control device monitoring records for each engine group equipped with an oxidation catalyst (Ref. Nos. E1-E40). This includes records of the catalyst bed temperatures.

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These records shall be available for inspection by the DEQ and shall be current for the most recent five years. (9 VAC 5-80-110 and Condition No. 20 of the minor NSR permit dated 12/4/2013)”

32. Condition 44 of Permit 1 as cited in paragraph C.21.

33. Condition 45 of Permit 1 as cited in paragraph C.8.

34. DEQ staff reviewed daily records of inlet charge air temperature observations from November 2018 through June 2020. The following operating days contained no inlet charge air temperature observations for the hourly readings:

Rockville 1: June 16<sup>2</sup>, 2020

Rockville 2: October 2, 2019

35. Condition 22 (2017) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The monitoring devices used to measure inlet charge-air temperature shall be observed by the permittee with a frequency of not less than hourly whenever the engines are operating. The permittee shall keep a log of the temperature observations from the monitoring devices including the time the observation was recorded. (9 VAC 5-80-110 and Condition No. 12 of the minor NSR permit dated 12/4/2013).”

36. Condition 23 (2020) of Permit 1 states, “Fuel Burning Equipment Requirements – Monitoring - The monitoring devices used to measure inlet charge-air temperature shall be observed by the permittee with a frequency of not less than hourly whenever the engines are operating. The permittee shall keep a log of the temperature observations from the monitoring devices including the time the observation was recorded. (9 VAC 5-80-110 and Condition No. 12 of the minor NSR permit dated 12/4/2013).”

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<sup>2</sup> This date was erroneously referred to as June 13, 2020 in other supporting documents.

37. Condition 24.h. of Permit 1 states, “24. Fuel Burning Equipment Requirements – Recordkeeping - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Piedmont Region. These records shall include, but are not limited to:
- ...  
h. Results of all stack tests, visible emissions evaluations, monthly visible emission evaluations, log and performance evaluations;  
...  
These records shall be available for inspection by the DEQ and shall be current for the most recent five years. (9 VAC 5-80-110 and Condition No. 20 of the minor NSR permit dated 12/4/2013)”
38. Condition 45 of Permit 1 as cited in paragraph C.8.
39. The first half 2019 Semi-Annual Monitoring Report reported that deviations occurred, but did not report all the ones discovered during the inspection. The second half 2019 Semi-Annual Monitoring Report reported deviations of opacity on October 2 and 17, 2019 as reported in the October 23, 2019 letter. However, several other deviations occurring within the second half of 2019 were not reported.
40. Condition 46 of Permit 1 states, “General Conditions - Recordkeeping and Reporting - The permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1st and September 1st of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:
- ...  
b. All deviations from permit requirements. For purpose of this permit, deviations include, but are not limited to:
- i. Exceedance of emissions limitations or operational restrictions;
  - ii. Excursions from control device operating parameter requirements, as documented by continuous emission monitoring, periodic monitoring, or Compliance Assurance Monitoring (CAM) which indicates an exceedance of emission limitations or operational restrictions; or,
  - iii. Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit ... (9 VAC 5-80-110 F).”
41. The Annual Compliance Certification submitted for calendar year 2019 stated that all deviations were reported in the July 25, 2019 and February 11, 2020 Semi-Annual Monitoring Reports. As noted in paragraph C.39, not all deviations were reported in the 2019 Semi-Annual Monitoring Reports.
42. Condition 47 of Permit 1 states, “General Conditions - Annual Compliance Certification - Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices for the period ending December 31. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and §504(b) of the federal Clean Air Act. This certification shall be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include: ...

- b. The identification of each term or condition of the permit that is the basis of the certification;
  - c. The compliance status;
  - d. Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance;
  - e. Consistent with subsection 9 VAC 5-80-110 E, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period;
  - f. Such other facts as the permit may require to determine the compliance status of the source; and ... (9 VAC 5-80-110 K.5).”
43. The Department requested daily records from June 2018 through February 2020. Records of emissions indicate that fuel was burned in the months of June 2018 through August 2018, however, INGENCO provided daily records ranging from November 2018 through February 2020. The records from June 2018 through October 2018 were not provided.
44. Condition 55 of Permit 1 states, “Duty to Submit Information - The permittee shall furnish to the Board, within a reasonable time, any information that the Board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the Board along with a claim of confidentiality. (9 VAC 5-80-110 G.6)”
45. A copy of the most recent permit was not available onsite.
46. Condition 63 of Permit 1 states, “63. General Conditions – Permit Availability - Within five days after receipt of the issued permit, the permittee shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to DEQ upon request. (9 VAC 5-80-150 E)”
47. On May 6, 2020, DEQ issued Notice of Violation No. APRO001489-001 to INGENCO for the violations noted in paragraphs C.3. through C.46. On September 24, 2020, DEQ staff held a conference call with representatives of INGENCO to discuss the violations noted for the Rockville facility and any corrective actions they have implemented or planned to implement.
48. On October 27, 2020, DEQ staff completed its review of the compliance documentation submitted by INGENCO on July 29, 2020 as required by the 2020 Consent Order. The updated or revised observations are included in the applicable paragraphs above while the rest is provided below:
- 1. As violations were confirmed with Condition 5, INGENCO is in violation of the emission limits in Permit conditions 33 (2017) and 35 (2020). See paragraphs C.3., C.4, C.5. and C.7.
49. On March 19, 2021, DEQ staff received and reviewed compliance records for Dinwiddie submitted by INGENCO in preparation for the 2021 FCE to be performed there. Paragraphs C.50, C.54 and C.58 contain DEQ staff’s observations.
50. Observations of the differential pressure gauge for the oxidation catalyst were not recorded for the following operational days:

Dinwiddie #1: June 25, 2019

Dinwiddie #2: January 31, February 26, March 7, 13, and May 2, 2019.

51. Condition 17 of Permit 2 states, "Fuel Burning Equipment Requirements – Monitoring - The oxidation catalyst shall be equipped with devices to continuously measure the differential pressure drop across each oxidation catalyst. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the control devices are operating. (9 VAC 5-80-110)"
52. Condition 21 of Permit 2 states, "Fuel Burning Equipment Requirements – Monitoring - The monitoring devices used to measure the catalysts shall be observed by the permittee with a frequency of not less than once per shift. The permittee shall keep a log of the observations including the time the observation was recorded, or continuously record measurements from each of the control monitoring devices. (9 VAC 5-80-110)"
53. Condition 24 of Permit 2 states, "Fuel Burning Equipment Requirements – Recordkeeping - The permittee shall maintain records of all emissions data and operating parameters necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Piedmont Region. These records shall include, but are not limited to:
- ...
- k. Log of observations or records of measurements from the pressure drop monitoring device on each catalysts; and
- l. Operation and control device monitoring records for each engine group equipped with an oxidation catalyst (Ref. Nos. E1-E40). This includes records of the catalyst bed temperatures.

These records shall be available on site for inspection by the Department and shall be current for the most recent five years. (9 VAC 5-80-110 and Condition 20 of the minor NSR permit dated December 4, 2013)"

54. Observations of the exhaust gas temperature records included negative or erroneous readings for the following operational days:  
Dinwiddie #1: March 7, 13, May 10, June 1, 25, 2019 and February 20, 2020  
Dinwiddie #2: March 7, 8, 12, 13, 15, May 2, June 1, October 2, November 8, 2019 and March 26, April 3 and June 17, 2020.
55. Condition 18 of Permit 2 states. "Fuel Burning Equipment Requirements – Monitoring -The oxidation catalyst shall be equipped with devices to continuously measure and record the inlet temperature to the catalyst bed at a minimum frequency of once every fifteen minutes during the operation of each engine group. As approved by the Director, Piedmont Regional Office, compliance with this requirement may be achieved by continuously measuring and recording the engine exhaust temperature at the minimum frequency described above and, as confirmation, measuring and recording the inlet temperature to the catalyst bed once per shift. The information shall be correlated to run date, engine load/kilowatt output, and engine operating hours. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the oxidation catalysts are operating. (9 VAC 5-80-110)"

56. Condition 21 of Permit 2 as cited in paragraph C.52.
57. Condition 24 of Permit 2 as cited in paragraph C.53.
58. Not all violations were reported in the Title V Semiannual Monitoring Reports for the first and second halves of 2019 and the first half of 2020. These same violations were not reported in the Title V Annual Compliance Certifications for calendar years 2019 and 2020.
59. Condition 49 of Permit 2 states, "General Conditions -Recordkeeping and Reporting - The permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 and September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:
- ...
- b. All deviations from permit requirements. For purpose of this permit, deviations include, but are not limited to:
- i. Exceedance of emissions limitations or operational restrictions;
  - ii. Excursions from control device operating parameter requirements, as documented by continuous emission monitoring, periodic monitoring, or Compliance Assurance Monitoring (CAM) which indicates an exceedance of emission limitations or operational restrictions; or,
  - iii. Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit.
- ...(9 VAC 5-80-110)"
60. Condition 50 of Permit 2 states, "General Conditions - Annual Compliance Certification - Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices for the period ending December 31. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and §504(b) of the federal Clean Air Act. The permittee shall maintain a copy of the certification for five (5) years after submittal of the certification. This certification shall be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:
- ...
- d. Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance;
- ...(9 VAC 5-80-110)"
61. On June 24, 2021, DEQ issued Warning Letter No. APRO001891-001 to INGENCO for the violations noted in paragraphs C.49. through C.60.
62. Va. Code §10.1-1322 states that failure to meet conditions of a permit is considered a violation of the Virginia Air Pollution Control Law.
63. 9VAC5-80-260 and 9VAC5-80-1210(I) require compliance with all terms and conditions of Title V operating permits and permits for stationary sources respectively.
64. Based on the results of the above mentioned PCEs, FCE's, meetings and submitted documentation, the Board concludes that INGENCO has violated conditions 5, 12, 13, 17, 18, 19,

20, 21, 22, 24, 23, 33, 44, 45, 46, 47, 55 and 63 of Permit 1, conditions 17, 18, 21, 24, 49 and 50 of Permit 2, Va. Code § 10.1-1322 and 9VAC5-80-260 and -1210 of the Virginia Air Pollution Control Law and Regulations as described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders INGENCO, and INGENCO agrees, to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$69,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

INGENCO shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, INGENCO shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of INGENCO for good cause shown by INGENCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, INGENCO admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INGENCO declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. INGENCO does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and INGENCO. Nevertheless, INGENCO agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after INGENCO has completed all of the requirements of the Order;
- b. INGENCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to INGENCO.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by INGENCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of INGENCO certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind INGENCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of INGENCO.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

James J. Golden, Regional Director  
Department of Environmental Quality

INGENCO Wholesale Power, LLC. voluntarily agrees to the issuance of this Order.

Date: 6/29/2021 By: [Signature], SVP Head of Asset Optimization  
(Person) (Title)  
INGENCO Wholesale Power, LLC.

Commonwealth of ~~Virginia~~ Texas  
City/County of Houston / Harris County

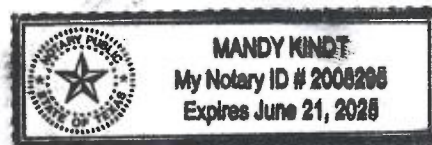
The foregoing document was signed and acknowledged before me this 29th day of June, 2021, by Brad Bumpster, who is SVP Head of Asset Optimization of INGENCO Wholesale Power, LLC., on behalf of the corporation.

[Signature]  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 6/21/2025

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

By August 1, 2021, INGENCO agrees to perform the following:

1. Submit procedures for ensuring all monitoring and measuring equipment is operational prior to operating any emission unit at Rockville and Dinwiddie.
2. Submit a copy of all records required to be maintained for compliance with the Permit for the months of January through June 2021.

### **DEQ Contact**

Unless otherwise specified in this Order, INGENCO shall submit all requirements of Appendix A of this Order to:

David Robinett  
Air Compliance Manager  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
804-527-5128  
804-527-5106 (fax)  
[david.robinett@deq.virginia.gov](mailto:david.robinett@deq.virginia.gov)